

1 that you worked at the 40/40 Club?

2 A. No.

3 Q. Did you have the ability to print
4 out from POSitouch the hours that you had
5 worked?

6 A. Yes.

7 Q. But you never did so?

8 A. I never did --

9 Q. You never printed them out?

10 A. I printed them. I took it. But I
11 assumed that we would get something as far as a
12 check to show our hours.

13 Q. So what did you do with that
14 printout?

15 A. I keep it.

16 Q. So do you still have that?

17 A. No, I don't.

18 Q. When did you get rid of those?

19 A. Pretty much when I wasn't working at
20 40/40.

21 MS. SHEINKIN: Can we take a break?

22 MR. KIRSCHENBAUM: Sure.

23 MS. SHEINKIN: Just five minutes.

24

1 (A recess was taken.)

2

3 BY MS. SHEINKIN:

4 Q. Did you receive wages in addition to
5 the tips that you received at the 40/40 Club?

6 A. No. I don't -- I didn't receive
7 anything.

8 Q. You never received --

9 A. Any documents, any -- anything
10 showing that I was getting paid at all.

11 Q. You never received any paychecks?

12 A. No.

13 Q. To your knowledge, were paychecks
14 available for you to pick up?

15 A. There would be a box of paychecks,
16 but they would be for parties -- from parties.

17 Q. Where was this box of paychecks?

18 A. In the office.

19 Q. And did you regularly go look at the
20 box in order to find paychecks?

21 A. Yes.

22 Q. And the only paychecks in that box,
23 you're saying, were for parties?

24 A. Yes.

1 They kind of just let it be, even if they had
2 issues.

3 Q. Did they -- did Kimberly tell you
4 any specific issues she had?

5 A. No. She just kind of said, this is
6 how it goes.

7 Q. Do you know whether Kimberly
8 received paychecks from the 40/40 Club?

9 A. Everyone said that they don't get
10 any paychecks.

11 Q. She told you that she did not?

12 A. Yeah.

13 Q. When you went into the office and
14 there was the box of checks, was everyone's check
15 in the same box?

16 A. Yes.

17 Q. Were they in envelopes?

18 A. Yes.

19 Q. So --

20 A. Some were in envelopes. Some were
21 kind of just --

22 Q. Loose?

23 A. Yeah.

24 Q. Could you look at other people's

1 bartender. The rest were servers.

2 Q. And tell me about your conversation
3 with Emanuel.

4 A. Same thing. It was more just a lot
5 of questioning.

6 Q. Well, it sounds like you're asking
7 questions concerning why you haven't received
8 money for this party. Were you also referring to
9 not receiving wages?

10 A. That was already spoken about.
11 Because as I said, majority of the time they
12 would just tell us -- well, tell me, that no one
13 ever received a paycheck. It was kind of the
14 mystery question.

15 Q. Did they specifically tell you that
16 they had not received wages for the hours they
17 had worked?

18 A. No, they kind of just said, we never
19 get a paycheck.

20 Q. Did anyone at the 40/40 Club ever
21 tell you they had not received wages for the
22 hours that they worked?

23 MR. KIRSCHENBAUM: Objection.

24 That's a vague question.

1 back and you'll have to pay.

2 MR. KIRSCHENBAUM: That's fine.

3 MR. MARKS: You want to have that,
4 that's fine.

5 MR. KIRSCHENBAUM: I'll take the
6 consequences in stride.

7 MR. MARKS: Okay.

8

9 BY MS. SHEINKIN:

10 Q. Are you refusing to answer that
11 question?

12 MR. KIRSCHENBAUM: Yes.

13 A. Yes.

14 Q. Did you receive a W2 from 40/40
15 Club?

16 A. Yes, but it doesn't say much.

17 Q. But you did receive it?

18 A. It doesn't say much. It doesn't
19 look like a W2 form I would normally receive.

20 Q. When did you receive it?

21 A. January of this year.

22 Q. So you received that in the mail
23 from the 40/40 Club?

24 A. Yes.

1 Q. That's something that you could
2 discuss with your attorney, but I'm asking you
3 questions now.

4 A. Okay.

5 Q. You received this 1099?

6 A. Yes.

7 Q. When?

8 A. This month. A couple of weeks ago.
9 Maybe the end of December, recently.

10 Q. I'm sorry?

11 A. I said a couple of weeks ago, maybe
12 in December. But I know it's recent.

13 Q. And do you know what this
14 compensation is for?

15 A. No.

16 Q. Did you receive any other 1099s from
17 the 40/40 Club?

18 A. No.

19 Q. Have you received any other
20 documents in the mail from the 40/40 Club?

21 A. No.

22 Q. Did you have any conversation with
23 other employees of the 40/40 Club about whether
24 or not they received W2s?

1 A. No.

2 Q. Do you know whether or not any other
3 employee at the 40/40 Club have either did or did
4 not receive a W2?

5 A. No.

6 Q. Each night you went home with the
7 tips that you had received that night; correct?

8 A. Yes.

9 Q. Other than perhaps for a party where
10 you received a check later on?

11 A. Yes.

12 Q. Do you allege that the 40/40 Club
13 retained any portion of your tips?

14 A. That night?

15 Q. Other than the party --

16 A. Other than --

17 Q. -- that you referred to?

18 A. Other than the party, no.

19 Q. You received all of the tips that
20 you had earned?

21 A. Yes. Except if there was a dispute
22 with a credit card.

23 Q. What do you mean by a dispute with a
24 credit card?

1 A. If an imprint wasn't taken, a
2 signature wasn't -- there was no signature on the
3 slip.

4 Q. What would happen?

5 A. They would keep it for 90 days.

6 Q. That happened to you?

7 A. Yes.

8 Q. On how many occasions?

9 A. Once.

10 Q. When was that?

11 A. I don't remember.

12 Q. Do you recall the circumstances?

13 A. It was a wrong slip to -- wrong
14 imprint to the actual slip printed from the
15 POSitouch system.

16 Q. I'm sorry. Can you explain that?

17 A. The imprint that I had told you
18 about earlier.

19 Q. You took an imprint of a credit
20 card?

21 A. Right. And it has to be together
22 with the closeout sheet from the system. It was
23 the wrong imprint that I stapled to another -- it
24 was another credit card that was stapled to what

1 it should have been. Because it was busy. I
2 just didn't know -- I wasn't being careful at
3 that time.

4 Q. Okay. What happened?

5 A. I had multiple credit card slips,
6 and then I was kind of just going.

7 Q. How did that issue come to light?

8 A. At the end of the night.

9 Q. Okay. What happened?

10 A. Des approached me about it, asked me
11 what happened. I don't know how it happened. I
12 messed up. I took the wrong imprint by accident.
13 And that was my story.

14 Q. And at that time you didn't receive
15 the tip for that check?

16 A. No.

17 Q. And what happened after 90 days,
18 then you did receive it?

19 A. No, I had left already by that time.

20 Q. So you never went back to ask for
21 it?

22 A. No.

23 Q. Do you have any knowledge of any
24 other employee having a tip retained because of a

1 dispute with a credit card?

2 A. Yes, but I do not know the name. I
3 remember hearing that.

4 Q. But you don't have any specific
5 knowledge of any specific incident where that
6 occurred?

7 A. No.

8 Q. Did you ever have any money taken
9 from you for spills or breakage?

10 A. Breakage.

11 Q. That did occur?

12 A. Yes.

13 Q. On how many occasions?

14 A. One.

15 Q. What were the circumstances?

16 A. A bottle broke.

17 Q. A bottle of alcohol?

18 A. Yes.

19 Q. And what happened?

20 A. It was me and another bartender I
21 was working with at that time. A bottle broke,
22 and we had to pay for it.

23 Q. You and the other bartender?

24 A. Yes.

1 Q. Who was the other bartender?

2 A. Jenny.

3 Q. Jenny?

4 A. Jenny.

5 Q. How did the bottle break?

6 A. The -- it's on glass, and because of
7 the music being so loud the bass pushes it
8 forward.

9 Q. So neither of you were touching the
10 bottle when it broke?

11 A. No, we have to kind of monitor it
12 and keep pushing it back. But at that time it
13 was busy, and we just kind of didn't.

14 Q. How much was the bottle?

15 A. I think we had to pay 40 each,
16 something like that.

17 Q. Do you recall what it was?

18 A. Bombay Sapphire.

19 Q. Who did you pay the money to?

20 A. I gave it to Jenny, and I believe
21 Jenny gave it to Des or whatever manager.

22 Q. Did somebody tell you that you had
23 to pay that money?

24 A. We had to say -- we had to say what

1 happened, because at the end of the night in
2 order for us to get a full bottle we have return
3 an empty bottle. So we had to tell the manager
4 that a bottle broke.

5 Q. What manager?

6 A. I think his name was Michael.

7 Q. Michael?

8 A. Michael.

9 Q. Do you recall his last name?

10 A. No.

11 Q. Do you recall when this occurred?

12 A. No.

13 Q. And you gave \$40 to Jenny?

14 A. Jenny said, do you have the money
15 for the bottle, and I'll give it to the manager
16 or Des.

17 Q. Did you witness her give it to the
18 manager?

19 A. No.

20 Q. So you don't know one way or the
21 other whether or not she gave that money to
22 anyone at the 40/40 Club?

23 A. I didn't witness it.

24 Q. Other than Jenny, did you witness